

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 23.07.2007

+ **WP(C) No.3911/2007**

DR (MS) POONAM DAHIYA

...Petitioner

- versus -

**FACULTY OF MANAGEMENT STUDIES
& ANOTHER**

...Respondents

Advocates who appeared in this case:

For the Petitioner

: Mr S. K. Sinha

For the Respondents

: Mr A. Mariarputham

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J

1. The petitioner is seeking admission to the MBA (Part Time) three year programme in respect of Health Care Administration for the academic session 2007-2010 offered by the Faculty of Management Studies, University of Delhi. The last date for submission of application forms was 25.11.2006. The Admission Bulletin brought out by the Faculty of Management Studies (University of Delhi) provided information both specific to the courses as well as general information.

Under the heading 'General Information', the Admission Bulletin specifically indicated:-

“3% of the seats are reserved for candidates with physical disabilities (as per University of Delhi Guidelines).”

2. The information specific to the MBA Health Care Administration Course provides that the intake for this programme would be 20 participants. The petitioner is physically handicapped. The printed application forms contained only two categories of reserved candidates. They being, SC and ST. There was no provision for physically handicapped in the application form for the particular course in which the petitioner was seeking admission. However, the petitioner in her own hand added 'PH' within a box made by her. Similarly, in the Interview Registration Form, the only categories that were printed were for SC, ST and General. The petitioner in her own hand added 'PH' representing physically handicapped.

3. The Interview was held on 26.4.2007 and the admission list was brought out on the same date. In the main admission list, the petitioner did not find her name. She was, however, placed at S.No.4 in the Waiting List in the General Category. The last date for joining the

course was 15.05.2007. The writ petition was filed on 17.05.2007.

4. The learned counsel for the petitioner contended that the Admission Bulletin made it clear that 3% reservation would be available for the physically handicapped candidates. It is for this reason that the petitioner indicated in her application form that she was a physically handicapped candidate and she also enclosed her handicap certificate issued by the General Hospital, Sonapat. It was contended by the learned counsel that the petitioner ought to have been considered, not under the General Category, but under the Physically Handicapped Category and, therefore, she would be entitled to admission.

5. Mr Mariarputham, who appears on behalf of the University, submitted that the intake for the particular course was notified as 20 participants. Three percent of 20 participants would amount to 0.66% which is less than one and it is for this reason that the University did not reserve any seats for the Physically Handicapped Category insofar as this course was concerned. He submitted that it is not that the University did not want to reserve such seats, but it could not because of the way the numbers worked out. He submitted that it is for this reason that the

application form for the MBA Programme for Health Care Administration did not carry any box for Physically Handicapped candidates, nor did the registration form in respect of the interview.

6. He further submitted that assuming, but, without admitting, that a seat could be reserved for the Physically Handicapped candidates for this course, the same would have had to be notified and provision would have had to be made in the application form itself so that other aspiring candidates who also had a physical handicap could have applied under this category. Such provision not having been made by the University, it would not be fair to accept the application form of the petitioner as a physically handicapped candidate and thereafter grant her admission. This would work injustice to the other candidates who could have applied under this category.

7. Mr Mariarputham also submitted that the petitioner ought to have approached this court as soon as she knew that the Physically Handicapped Category did not find mention in the application form. The last date for submitting the application form was 25.11.2006. Even the interviews were held on 26.04.2007 and the admission list was brought

out on 26.04.2007 itself. The petitioner waited for almost a month thereafter and filed the writ petition on 17.05.2007, after the date of joining, which was notified as 15.05.2007, had also gone by. He submits that on the ground of delay also, this writ petition ought to be dismissed.

8. Finally, Mr Mariarputham submitted that, in any event, as of now all the 20 seats have been taken and there is no vacancy and, therefore, the petitioner cannot be accommodated in this session. He submitted that for the future, he would advise the University to make some provision for physically handicapped candidates by either increasing the intake or by providing at least one seat for this category.

9. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the said Act') specifically provides in Section 39 thereof that all Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than 3% seats for persons with disabilities. The Admission Bulletin brought out by the Faculty of Management Studies also indicates, as indicated above, that 3% of the seats would be reserved for candidates

with physical disabilities as per the University of Delhi Guidelines. The difficulty pointed out by the learned counsel for the respondent was that the MBA (Part Time) three year programme in respect of Health Care Administration had only an intake of 20 students and that 3% of 20 students would amount to 0.66% which is less than one and, therefore, no seat was reserved for physically handicapped candidates. This interpretation is not in consonance with the provisions of the said Act. Section 39 mandates that not less than 3% seats must be reserved for persons with disabilities. It does not provide a maximum. On the contrary, it specifies a minimum. There was nothing preventing the university from reserving more than 3% of the seats for persons with disabilities and consequently providing for at least one seat out of the 20 for persons with disabilities.

10. I had called for the application forms in respect of the other MBA Courses. The same had been produced by Mr Mariarputham on 17.07.2007. On examination of the said forms, it was apparent that wherever the reservation for physically handicapped candidates was to be given by the university, the same had been indicated in the form itself. In the case of the MBA Programme for Health Care Administration, no such

reservation was made. It is because of this that the petitioner had, in her own hand, drawn a box and entered 'PH' within the same. The position that obtains today is that the university was wrong in not reserving at least one seat. The argument that 3% reservation amounts to only 0.66 seats and therefore no seat could be reserved, is not tenable, as already pointed out above. However, one must not lose sight of the fact that the petitioner has approached this court belatedly. The last date for submitting the application form was 25.11.2006. The petitioner not having found the provision for physically handicapped candidates in the application form ought to have raised this issue at that point. She did not. Even in the registration form for the interview, there was no provision for physically handicapped candidates and at that point also she did not raise this issue. The interviews were held on 26.04.2007 and the admission list was brought out on 26.04.2007 itself. Even then, she did not raise this issue and the writ petition itself was filed on 17.05.2007 even after the date of joining (i.e., 15.05.2007) was over. Therefore, the petitioner has not approached this court in time.

11. Because the petitioner did not approach this court in time, if admission is now granted to her, it would mean that the university would

have to increase the intake of students by one and that the petitioner would have to be given admission because no other person belonging to the physically handicapped category had applied. This would mean that the petitioner would gain an unfair advantage over aspiring candidates belonging to the physically handicapped category who did not apply because there was no provision for reservation insofar as this course was concerned.

12. In these circumstances, although the university ought to have reserved at least one seat for the physically handicapped category, the petitioner would not be entitled to get admission. Accordingly, this writ petition is disposed of with the direction that in future, the university shall reserve at least one seat and carry out the mandate of Section 39 of the said Act in letter and spirit. However, insofar as the petitioner is concerned, she would not be entitled to get admission in the academic session of 2007-2010 under the physically handicapped category. No costs.

**BADAR DURREZ AHMED
(JUDGE)**

July 23, 2007

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